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Board of County Commissioners Agenda Request 46

Date of Meeting: October 14, 2003

Date Submitted: October 8, 2003

To: Honorable Chairman and Members of the Board
From: Herbert W.A. Thiele, Esq. County Attorney
Subject: First and Only Public Hearing for Proposed Amendments to Local Preference Ordinance

Statement of Issue

Conduct the first and only Public Hearing to amend the Local Preference Ordinance in order to change the definition of "local business" and provide other clarifications to the Ordinance.

Background

The current Local Preference Ordinance, Attachment #1, Section 2-400 of the Leon County Code of Laws, was adopted by the Board on March 26, 2002. On September 16, 2003, the Board revisited the Local Preference Ordinance and requested that the definition of "local business" be slightly modified and that other minor modifications be proposed to the above-referenced Ordinance.

Analysis

Attached for the Board's consideration, as Attachment #2, are the proposed revisions to the Local Preference Ordinance, in underline ~~striketrough~~ format.

The proposed revisions include changing the definition of "local business" to include a requirement that the "local business" be the principal offeror, whether as a single offeror, a business which is the prime contractor and not a subcontractor, or a partner or joint venturer submitting an offer in conjunction

with other businesses. The definitional language revisions also remove the requirements concerning employing at least one fulltime employee or at least two part-time employees, whose primary residence is in Leon County.

Further revisions to the proposed Ordinance include providing a 5% preference for those individuals or firms who otherwise meet the definition of a "local business" and have their home office located within Leon County. For those individuals or firms who do not have their home office located within Leon County, but which otherwise meet all of the criteria for a "local business" as set forth in the definition section, such preference will be in the amount of 3% of the bid price, or proposal score.

Notice of Public Hearing was duly advertised pursuant to Section 125.66, Florida Statutes (Attachment #3).

Options

1. Conduct the Public Hearing and adopt the proposed revisions to the Local Preference Ordinance.
2. Conduct the Public Hearing and do not adopt the proposed revisions to the Local Preference Ordinance.
3. Board direction.

Recommendation

Option #1.

Attachments

1. Section 2-400, Leon County Code of Laws.
2. Proposed revisions to Ordinance 2002-02.
3. Notice of Public Hearing.

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telephone company to take action to enforce collection shall not be deemed a waiver by Leon County of any rights it might have to obtain compliance with the terms of this division.

(c) The telephone company shall commence collection of this fee at the time and rate set forth in the resolution adopted pursuant to section 2, paragraph (1) herein.

(d) The clerk to the Board of County Commissioners shall establish and maintain a separate audit account in accordance with the provisions of Section 365.171(13)(a)3, Florida Statutes, or its successor provision and shall report to the Board of County Commissioners if any deficit or surplus exists in said account at the appropriate time in accordance with law.

(e) Any and all fees collected by the telephone company and remitted to Leon County in excess of current expenditures for the "E-911" system may be invested by the clerk in any manner provided by law. Any interest earned on any fees collected pursuant to this division shall be credited to and deposited in the "E-911" fund. (Ord. No. 89-5, § 4, 3-14-89)

Secs. 2-355—2-399. Reserved.

ARTICLE IX. PURCHASING

Sec. 2-400. Local preference in purchasing and contracting.

(a) *Preference in bidding.* In purchasing of, or letting of contracts for procurement of, personal property, materials, contractual services, and construction of improvements to real property or existing structures in which pricing is the major consideration, the authorized purchasing authority of the county may give a preference to local businesses in making such purchase or awarding such contract, in an amount of five percent of the bid price for purchases under \$250,000.00, and two percent of the bid price for purchases \$250,000.00 and above. The maximum cost differential shall not exceed \$20,000.00. Total bid price shall include the base bid and all alternatives or

options to the base bids which are part of the bid and being recommended for award by the appropriate authority.

(b) *Preference in requests for proposals.* In purchasing of, or letting of contracts for procurement of, personal property, materials, contractual services, and construction of improvements to real property or existing structures for which a request for proposals is developed with evaluation criteria, a local preference of not more than five percent of the total score may be assigned for a local preference. Based upon analysis of the marketplace for each project, staff shall make a recommendation for or against inclusion of a local preference in the criteria for consideration by the Board as a part of the pre-approval agenda item for each request for proposal.

(c) *Notice.* Both bid documents and request for proposal documents shall include notice to vendors of the local preference policy.

(d) *Local business definition.* For purposes of this section, "local business" shall mean a business which:

- (1) Has had a fixed office or distribution point located in and having a street address within Leon County for at least six months immediately prior to the issuance of the request for competitive bids or request for proposals by the county; and
- (2) Holds any business license required by the county, and, if applicable, the City of Tallahassee; and
- (3) Employs at least one full-time employee, or two part-time employees whose primary residence is in Leon County, or, if the business has no employees, the business shall be at least fifty percent owned by one or more persons whose primary residence is in Leon County.

(e) *Certification.* Any vendor claiming to be a local business as defined by subsection 2-400(d) above, shall so certify in writing to the purchasing division. The certification shall provide all necessary information to meet the requirements of section 2-400(d) above. The purchasing agent shall not be required to verify the accuracy of any

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such certifications, and shall have the sole discretion to determine if a vendor meets the definition of a "local business."
(Ord. No. 02-02, § 1, 3-26-02)

ORDINANCE NO. 2003-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, AMENDING ARTICLE IX, SECTION 2-400, OF CHAPTER 2 OF THE CODE OF LAWS OF LEON COUNTY, FLORIDA, RELATING TO LOCAL PREFERENCE IN PURCHASING AND CONTRACTING; AMENDING THE DEFINITION OF "LOCAL BUSINESS"; AMENDING THE LOCAL PREFERENCE PERCENTAGES IN BIDDING AND REQUESTS FOR PROPOSALS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on March 26, 2002, the Board of County Commissioners of Leon County adopted Ordinance 2002-02, therein creating a new Section 2-400, Leon County Code of Laws, to provide for a local preference in purchasing and contracting; and

WHEREAS, the Board of County Commissioners desires to amend Section 2-400, Leon County Code of Laws, by amending the definition of "Local Business," and by amending the local preference percentage;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, that:

Section 1. Chapter 2, Article IX, Section 2-400, of the Code of Laws of Leon County, Florida, is hereby amended to read as follows:

ARTICLE IX. PURCHASING

Sec. 2-400. Local Preference in Purchasing and Contracting

(a) *Preference in Bidding.* In purchasing of, or letting of contracts for procurement of, personal property, materials, contractual services, and construction of improvements to real property or existing structures in which pricing is the major consideration, the authorized purchasing authority

of Leon County may give a preference to local businesses in making such purchase or awarding such contract, as follows:

- (1) Individuals or firms which have a home office located within Leon County, and which meet all of the criteria for a local business as set forth in this article, shall be given a preference in the amount of five percent (5%) of the bid price.
- (2) Individuals or firms which do not have a home office located within Leon County, and which meet all of the criteria for a local business as set forth in this article, shall be given a preference in the amount of three percent (3%) of the bid price.

~~for purchases under \$250,000, and two percent (2%) of the bid price for purchases \$250,000 and above.~~ The maximum cost differential shall not exceed \$20,000. Total bid price shall include the base bid and all alternatives or options to the base bids which are part of the bid and being recommended for award by the appropriate authority.

(b) *Preference in Requests for Proposals.* In purchasing of, or letting of contracts for procurement of, personal property, materials, contractual services, and construction of improvements to real property or existing structures for which a request for proposals is developed with evaluation criteria, a local preference of ~~not more than five percent (5%)~~ of the total score may be assigned for a local preference, as follows:

- (1) Individuals or firms which have a home office located within Leon County, and which meet all of the criteria for a local business as set forth in this article, shall be given a preference in the amount of five percent (5%).

- (2) Individuals or firms which do not have a home office located within Leon County, and which meet all of the criteria for a local business as set forth in this article, shall be given a preference in the amount of three percent (3%).

Based upon analysis of the marketplace for each project, staff shall make a recommendation for or against inclusion of a local preference in the criteria for consideration by the Board as a part of the pre-approval agenda item for each request for proposal.

(c) *Notice.* Both bid documents and request for proposal documents shall include notice to vendors of the local preference policy.

(d) *Local business definition.* For purposes of this section, "local business" shall mean a business which:

- (1) Has had a fixed office or distribution point located in and having a street address within Leon County for at least six (6) months immediately prior to the issuance of the request for competitive bids or request for proposals by the County; and
- (2) Holds any business license required by the County, and, if applicable, the City of Tallahassee; and
- (3) Is the principal Offeror who is a single Offeror; a business which is the prime contractor and not a subcontractor; or a partner or joint venturer submitting an offer in conjunction with other businesses.
- ~~(3) — Employs at least one (1) full time employee, or two (2) part time employees whose primary residence is in Leon County, or, if the business has no~~

~~employees, the business shall be at least fifty percent (50%) owned by one or more persons whose primary residence is in Leon County.~~

(e) *Certification.* Any vendor claiming to be a local business as defined by Sec. 2-400(d) above, shall so certify in writing to the Purchasing Division. The certification shall provide all necessary information to meet the requirements of Sec. 2-400(d) above. The purchasing agent shall not be required to verify the accuracy of any such certifications, and shall have the sole discretion to determine if a vendor meets the definition of a "local business."

Section 2. **Conflicts.** All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, except to the extent of any conflicts with the Tallahassee-Leon County 2010 Comprehensive Plan as amended, which provisions shall prevail over any parts of this ordinance which are inconsistent, either in whole or in part, with the said Comprehensive Plan.

Section 3. **Severability.** If any word, phrase, clause, section or portion of this ordinance shall be held invalid or unconstitutional by a court of competent jurisdiction, such portion or words shall be deemed a separate and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 4. **Effective Date.** This ordinance shall have effect upon becoming law.

DULY PASSED AND ADOPTED BY the Board of County Commissioners of Leon County,
Florida, this _____ day of _____, 2003.

LEON COUNTY, FLORIDA

BY: _____
JANE G. SAULS, CHAIRMAN
BOARD OF COUNTY COMMISSIONERS

ATTESTED BY:
BOB INZER, CLERK OF THE COURT

BY: _____
CLERK

APPROVED AS TO FORM:
COUNTY ATTORNEY'S OFFICE
LEON COUNTY, FLORIDA

BY: _____
HERBERT W.A. THIELE, ESQ.
COUNTY ATTORNEY

NOTICE OF PUBLIC HEARING

Notice is hereby given that the Board of County Commissioners of Leon County, Florida (the "County") will conduct a public hearing on Tuesday, October 14, 2003, at 5:00 p.m., or as soon thereafter as such matter may be heard, at the County Commission Chambers, 5th Floor, Leon County Courthouse, 301 South Monroe Street, Tallahassee, Florida, to consider adoption of an ordinance entitled to wit:

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, AMENDING ARTICLE IX, SECTION 2-400, OF CHAPTER 2 OF THE CODE OF LAWS OF LEON COUNTY, FLORIDA, RELATING TO LOCAL PREFERENCE IN PURCHASING AND CONTRACTING; AMENDING THE DEFINITION OF "LOCAL BUSINESS"; AMENDING THE LOCAL PREFERENCE PERCENTAGES IN BIDDING AND REQUESTS FOR PROPOSALS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

All interested parties are invited to present their comments at the public hearing at the time and place set out above.

Anyone wishing to appeal the action of the Board with regard to this matter will need a record of the proceedings and should ensure that a verbatim record is made.

In accordance with Section 206.26, Florida Statutes, persons needing a special accommodation to participate in this proceeding should contact Christine Coble or Facilities Management, Leon County Courthouse, 301 South Monroe Street, Tallahassee, Florida 32301, by written request at least 48 hours prior to the proceeding. Telephone: 488-8963 or 488-1848; 1-800-855-8771 (TDD), or 1-800-858-8770 (Voice), or 711 via Florida Relay service.

Copies of said ordinance may be inspected at the following locations during regular business hours:

Leon County Courthouse
301 S. Monroe St., 5th Floor Reception
Desk
Tallahassee, FL 32301

and

Leon County Courthouse (Clerk's Office)
301 S. Monroe Street, Room 224
Tallahassee, Florida 32301

OCTOBER 4, 2003